

Introduced by Senator Perata

February 22, 2005

~~An act to amend Section 49069.5 of, to add Section 42285.4 to, the Education Code, and to repeal Section 4 of Chapter 480 of the Statutes of 1992, relating to public records. An act to amend Section 41326 of the Education Code, relating to education finance.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 821, as amended, Perata. ~~Foster children: pupil transfers~~ *School districts: state-appointed administrators: annual updates.*

Existing law provides for emergency apportionments made by the state to school districts that are experiencing financial problems or that become insolvent. Existing law requires the Superintendent to appoint a trustee to any district that has accepted emergency apportionments because it has determined during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations.

Existing law further provides that if a school district accepts an emergency apportionment that exceeds an amount equal to 200% of the amount of reserve recommended for that district, as specified, the Superintendent must, among other things, assume the legal rights, duties, and powers of the governing board and appoint an administrator to act on his or her behalf.

Existing law requires the Superintendent and the state-appointed administrator to prepare reports and plans, including a management review and recovery plan, a multiyear financial recovery plan, and an annual report on the financial condition of the district, as specified.

This bill would require, for the period of time during which the Superintendent is assuming the legal rights, duties, and powers of the

governing board and has appointed an administrator to act on his or her behalf, the Superintendent to annually appear with the administrator at a regularly scheduled meeting of the governing board in order to provide an update on the reports and plans described above. The bill would also make the meeting subject to notice requirements applicable to regularly scheduled meetings and that governing board give members of the public the opportunity to participate in the portion of the meeting during which the update is provided.

~~Existing law provides that the timely transfer between schools of pupils in foster care is the responsibility of both the local educational agency and the county placing agency, as defined. Existing law requires the county placing agency, as soon as it becomes aware of the need to transfer the pupil between schools, to contact the appropriate person at the pupil's local educational agency regarding the transfer. Existing law requires the local educational agency, upon receiving the transfer request, to, within 2 business days, transfer the pupil and deliver the pupil's educational information and records to the next educational placement.~~

~~This bill would provide that a local educational agency within a Class 1 county would be required to transfer the pupil out of school and deliver the educational information and records of the pupil to the next educational placement within 5 days upon receiving the transfer request.~~

~~Existing law requires a county superintendent of schools to make specified computations for each district with fewer than 2,501 units of average daily attendance, on account of each necessary high school. Existing uncodified law make the River Delta Unified School District eligible to receive apportionments pursuant to the schedule and criteria for small necessary high schools, as defined, if the district has no more than 3,000 units of average daily attendance.~~

~~This bill would codify that authority and correct an erroneous code section reference.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. ~~Section 49069.5 of the Education Code is~~
- 2 ~~amended to read:~~

1 *SECTION 1. Section 41326 of the Education Code is*
2 *amended to read:*

3 41326. (a) Notwithstanding any other provision of this code,
4 the acceptance by a school district of an apportionment made
5 pursuant to Section 41320 that exceeds an amount equal to 200
6 percent of the amount of the reserve recommended for that
7 district under the standards and criteria adopted pursuant to
8 Section 33127 constitutes the agreement by the district to the
9 conditions set forth in this article. Prior to applying for an
10 emergency apportionment in the amount identified in this
11 subdivision, a school district governing board shall discuss the
12 need for that apportionment at a regular or special meeting of the
13 governing board and, at that meeting, shall receive testimony
14 regarding the apportionment from parents, exclusive
15 representatives of employees of the district, and other members
16 of the community. For purposes of this article, “qualifying school
17 district” means a school district that accepts a loan as described
18 in this subdivision.

19 (b) The Superintendent shall assume all the legal rights, duties,
20 and powers of the governing board of a qualifying school district.
21 The Superintendent, in consultation with the county
22 superintendent of schools, shall appoint an administrator to act
23 on his or her behalf in exercising the authority described in this
24 subdivision in accordance with all of the following:

25 (1) The administrator shall serve under the direction and
26 supervision of the Superintendent until terminated by the
27 Superintendent at his or her discretion. The Superintendent shall
28 consult with the county superintendent of schools before
29 terminating the administrator.

30 (2) The administrator shall have recognized expertise in
31 management and finance.

32 (3) To facilitate the appointment of the administrator and the
33 employment of any necessary staff, for the purposes of this
34 section, the Superintendent of Public Instruction is exempt from
35 the requirements of Article 6 (commencing with Section 999) of
36 Chapter 6 of Division 4 of the Military and Veterans Code and
37 Part 2 (commencing with Section 10100) of the Public Contracts
38 Code.

39 (4) Notwithstanding any other law, the Superintendent may
40 appoint an employee of the state or the office of the county

1 superintendent of schools to act as administrator for up to the
2 duration of the administratorship. During the tenure of his or her
3 appointment, the administrator, if he or she is an employee of the
4 state or the office of the county superintendent of schools, is an
5 employee of the school district, but shall remain in the same
6 retirement system under the same plan that has been provided by
7 his or her employment with the state or the office of the county
8 superintendent of schools. Upon the expiration or termination of
9 the appointment, the employee shall have the right to return to
10 his or her former position, or to a position at substantially the
11 same level as that position, with the state or the office of the
12 county superintendent of schools. The time served in the
13 appointment shall be counted for all purposes as if the
14 administrator had served that time in his or her former position
15 with the state or the office of the county superintendent of
16 schools.

17 (5) Except for an individual appointed as an administrator by
18 the Superintendent of Public Instruction pursuant to paragraph
19 (4), the administrator shall be a member of the State Teachers'
20 Retirement System, if qualified, for the period of service as
21 administrator, unless he or she elects in writing not to become a
22 member. A person who is a member or retirant of the State
23 Teachers' Retirement System at the time of appointment shall
24 continue to be a member or retirant of the system for the duration
25 of the appointment. If the administrator chooses to become a
26 member or is already a member, the administrator shall be placed
27 on the payroll of the school district for the purposes of providing
28 appropriate contributions to the system. The Superintendent may
29 also require the administrator to be placed on the payroll of the
30 school district for purposes of remuneration, other benefits, and
31 payroll deductions.

32 (6) For the purposes of workers' compensation benefits, the
33 administrator is an employee of the qualifying district, except
34 that an administrator appointed pursuant to paragraph (4) may be
35 deemed an employee of the state or office of the county
36 superintendent of schools, as applicable.

37 (7) The qualifying district shall add the administrator as a
38 covered employee of the school district all for purposes of errors
39 and omissions liability insurance policies.

1 (8) The salary and benefits of the administrator shall be
2 established by the Superintendent of Public Instruction and paid
3 by the qualifying school district.

4 (9) The Superintendent or the administrator may, on a
5 short-term basis, employ at district expense any staff necessary to
6 assist the administrator, including, but not limited to, a certified
7 public accountant.

8 (10) The administrator may do all of the following:

9 (A) Implement substantial changes in the fiscal policies and
10 practices of the district, including, if necessary, the filing of a
11 petition under Chapter 9 of the federal Bankruptcy Code for the
12 adjustment of indebtedness.

13 (B) Revise the educational program of the district to reflect
14 realistic income projections and pupil performance relative to
15 state standards.

16 (C) Encourage all members of the school community to accept
17 a fair share of the burden of the fiscal recovery of the district.

18 (D) Consult, for the purposes described in this subdivision,
19 with the governing board of the school district, the exclusive
20 representatives of the employees of the district, parents, and the
21 community.

22 (E) Consult with, and seek recommendations from, the
23 Superintendent, county superintendent of schools, and the
24 County Office Fiscal Crisis and Management Assistance Team
25 authorized pursuant to subdivision (c) of Section 42127.8 for the
26 purposes described in this article.

27 (F) With the approval of the Superintendent, enter into
28 agreements on behalf of the district and, subject to any
29 contractual obligation of the district, change any existing district
30 rules, regulations, policies, or practices as necessary for the
31 effective implementation of the recovery plans referred to in
32 Sections 41327 and 41327.1.

33 (G) *For the period of time during which the Superintendent*
34 *exercises the authority described in this subdivision, the*
35 *Superintendent shall annually appear with the administrator at a*
36 *regularly scheduled meeting of the governing board in order to*
37 *provide an update on the reports and plans described in Section*
38 *41327. This meeting is subject to the notice requirements*
39 *applicable to regularly scheduled meetings of the governing*
40 *board. The governing board shall provide members of the public*

1 *the opportunity to participate in the portion of the meeting*
2 *during which the update is provided.*

3 (c) (1) For the period of time during which the Superintendent
4 of Public Instruction exercises the authority described in
5 subdivision (b), the governing board of the qualifying school
6 district shall serve as an advisory body reporting to the
7 state-appointed administrator, and has no rights, duties, or
8 powers, and is not entitled to any stipend, benefits, or other
9 compensation from the district.

10 (2) Upon the appointment of an administrator pursuant to this
11 section, the district superintendent of schools is no longer an
12 employee of the district.

13 (3) A determination of the severance compensation for the
14 district superintendent shall be made pursuant to subdivision (j).

15 (d) Notwithstanding Section 35031 or any other law, the
16 administrator may, after according the employee reasonable
17 notice and the opportunity for a hearing, terminate the
18 employment of any deputy, associate, assistant superintendent of
19 schools, or any other district level administrator who is employed
20 by a school district under a contract of employment signed or
21 renewed after January 1, 1992, if the employee fails to document,
22 to the satisfaction of the administrator, that prior to the date of
23 the acceptance of the apportionment he or she either advised the
24 governing board of the district, or his or her superior, that actions
25 contemplated or taken by the governing board could result in the
26 fiscal insolvency of the district, or took other appropriate action
27 to avert that fiscal insolvency.

28 (e) The authority of the Superintendent, and the administrator,
29 under this section shall continue until all of the following occur:

30 (1) (A) At any time after one complete fiscal year has elapsed
31 following the district's acceptance of a loan as described in
32 subdivision (a), the administrator determines, and so notifies the
33 Superintendent and the county superintendent of schools, that
34 future compliance by the school district with the recovery plans
35 approved pursuant to paragraph (2) is probable.

36 (B) The Superintendent may return power to the governing
37 board for any area listed in subdivision (a) of Section 41327.1 if
38 performance under the recovery plan for that area has been
39 demonstrated to the satisfaction of the Superintendent.

1 (2) The Superintendent has approved all of the recovery plans
2 referred to in subdivision (a) of Section 41327 and the County
3 Office Fiscal Crisis and Management Assistance Team completes
4 the improvement plans specified in Section 41327.1 and has
5 completed a minimum of two reports identifying the district's
6 progress in implementing the improvement plans.

7 (3) The administrator certifies that all necessary collective
8 bargaining agreements have been negotiated and ratified, and that
9 the agreements are consistent with the terms of the recovery
10 plans.

11 (4) The district has completed all reports required by the
12 Superintendent and the administrator.

13 (5) The Superintendent determines that future compliance by
14 the school district with the recovery plans approved pursuant to
15 paragraph (2) is probable.

16 (f) When the conditions stated in subdivision (e) have been
17 met, and at least 60 days after the Superintendent of Public
18 Instruction has notified the Legislature, the Department of
19 Finance, the Controller, and the county superintendent of schools
20 that he or she expects the conditions prescribed pursuant to this
21 section to be met, the school district governing board shall regain
22 all of its legal rights, duties, and powers, except for the powers
23 held by the trustee provided for pursuant to Article 2
24 (commencing with Section 41320). The Superintendent shall
25 appoint a trustee under Section 41320.1 to monitor and review
26 the operations of the district until the conditions of subdivision
27 (b) of that section have been met.

28 (g) Notwithstanding subdivision (f), if the district violates any
29 provision of the recovery plans approved by the Superintendent
30 pursuant to this article within five years after the trustee
31 appointed pursuant to Section 41320.1 is removed, the
32 Superintendent may reassume, either directly or through an
33 administrator appointed in accordance with this section, all of the
34 legal rights, duties, and powers of the governing board of the
35 district. The Superintendent shall return to the school district
36 governing board all of its legal rights, duties, and powers
37 reassumed under this subdivision when he or she determines that
38 future compliance with the approved recovery plans is probable,
39 or after a period of one year, whichever occurs later.

1 (h) Article 2 (commencing with Section 41320) shall apply
2 except as otherwise specified in this article.

3 (i) It is the intent of the Legislature that the legislative budget
4 subcommittees annually conduct a review of each qualifying
5 school district that includes an evaluation of the financial
6 condition of the district, the impact of the recovery plans upon
7 the district's educational program, and the efforts made by the
8 state-appointed administrator to obtain input from the community
9 and the governing board of the district.

10 (j) (1) The district superintendent is entitled to a due process
11 hearing for purposes of determining final compensation. The
12 final compensation of the district superintendent shall be between
13 zero and six times his or her monthly salary. The outcome of the
14 due process hearing shall be reported to the Superintendent of
15 Public Instruction and the public. The information provided to
16 the public shall explain the rationale for the compensation.

17 (2) This subdivision applies only to a contract for employment
18 negotiated on or after June 21, 2004.

19 (k) (1) When the Superintendent assumes control over a
20 school district pursuant to subdivision (b), he or she shall, in
21 consultation with the County Office Fiscal Crisis and
22 Management Assistance Team, review the fiscal oversight of the
23 district by the county superintendent of schools. The
24 Superintendent may consult with other fiscal experts, including
25 other county superintendents of schools and regional fiscal teams
26 in conducting this review.

27 (2) Within three months of assuming control over a qualifying
28 district, the Superintendent shall report his or her findings to the
29 Legislature and shall provide a copy of that report to the
30 Department of Finance. This report shall include findings as to
31 fiscal oversight actions that were or were not taken and may
32 include recommendations as to an appropriate legislative
33 response to improve fiscal oversight.

34 (3) If after performing the duties described in paragraphs (1)
35 and (2), the Superintendent determines that the county
36 superintendent of schools failed to carry out his or her
37 responsibilities for fiscal oversight as required by this code, the
38 Superintendent may exercise the authority of the county
39 superintendent of schools who has oversight responsibilities for a
40 qualifying school district. If the Superintendent finds, based on

1 the report required in paragraph (1), that the county
2 superintendent of schools failed to appropriately take into
3 account particular types of indicators of financial distress or
4 failed to take appropriate remedial actions in the qualifying
5 district, the Superintendent shall further investigate whether the
6 county superintendent of schools failed to take into account those
7 indicators or similarly failed to take appropriate actions in other
8 districts with negative or qualified certifications and shall
9 provide an additional report on the fiscal oversight practices of
10 the county superintendent to the appropriate policy and fiscal
11 committees of each house of the Legislature and the Department
12 of Finance.

13 ~~49069.5. (a) The Legislature finds and declares that the~~
14 ~~mobility of pupils in foster care often disrupts their educational~~
15 ~~experience. The Legislature also finds that efficient transfer~~
16 ~~procedures and transfer of pupil records is a critical factor in the~~
17 ~~swift placement of foster children in educational settings.~~

18 ~~(b) The proper and timely transfer between schools of pupils~~
19 ~~in foster care is the responsibility of both the local educational~~
20 ~~agency and the county placing agency.~~

21 ~~(c) As soon as the county placing agency becomes aware of~~
22 ~~the need to transfer a pupil in foster care out of his or her current~~
23 ~~school, the county placing agency shall contact the appropriate~~
24 ~~person at the local educational agency of the pupil. The county~~
25 ~~placing agency shall notify the local educational agency of the~~
26 ~~date that the pupil will be leaving the school and request that the~~
27 ~~pupil be transferred out.~~

28 ~~(d) (1) Subject to paragraph (2), upon receiving a transfer~~
29 ~~request from a county placing agency, the local educational~~
30 ~~agency shall, within two business days, transfer the pupil out of~~
31 ~~school and deliver the educational information and records of the~~
32 ~~pupil to the next educational placement.~~

33 ~~(2) In a Class 1 county, as defined in Subdivision (a) of~~
34 ~~Section 2562, upon receiving a transfer request from a county~~
35 ~~placing agency, the local educational agency shall, within five~~
36 ~~business days, transfer the pupil out of school and deliver the~~
37 ~~educational information and records of the pupil to the next~~
38 ~~educational placement.~~

39 ~~(e) As part of the transfer process described under~~
40 ~~subdivisions (c) and (d), the local educational agency shall~~

~~1 compile the complete educational record of the pupil including a
2 determination of seat time, full or partial credits earned, current
3 classes and grades, immunization and other records, and, if
4 applicable, a copy of the pupil's plan adopted pursuant to Section
5 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794
6 et seq.) or individualized education program adopted pursuant to
7 the federal Individuals with Disabilities Education Act (20
8 U.S.C. Sec. 1400 et seq.);~~

~~9 (f) The local educational agency shall assign the duties listed
10 in this section to a person competent to handle the transfer
11 procedure and aware of the specific educational record keeping
12 needs of homeless, foster, and other transient children who
13 transfer between schools.~~

~~14 (g) The local educational agency shall ensure that if the pupil
15 in foster care is absent from school due to a decision to change
16 the placement of a pupil made by a court or placing agency, the
17 grades and credits of the pupil will be calculated as of the date
18 the pupil left school, and no lowering of grades will occur as a
19 result of the absence of the pupil under these circumstances.~~

~~20 (h) The local educational agency shall ensure that if the pupil
21 in foster care is absent from school due to a verified court
22 appearance or related court ordered activity, no lowering of his or
23 her grades will occur as a result of the absence of the pupil under
24 these circumstances.~~

~~25 SEC. 2. Section 42285.4 is added to the Education Code, to
26 read:~~

~~27 42285.4. Notwithstanding any other provision of law, River
28 Delta Unified School District is eligible to receive
29 apportionments pursuant to the schedule and criteria for small
30 necessary high schools, as described in Section 42284, if the
31 district has no more than 3,000 units of average daily attendance.~~

~~32 SEC. 3. Section 4 of Chapter 480 of the Statutes of 1992 is
33 repealed.~~